The court very properly held that the restrictions in the deeds involved in these cases could not be attacked as unconstitutional. The fourteenth amendment applies only to action by the state, not to the contracts of individuals.[15] While it is true that it limits not only the action of the legislature, but also that of the courts,[16] a court decision merely giving effect to a private contract is not in violation of the constitution.[17] *H. A. B.*

SALES: CONDITIONAL SALE: EFFECT OF SUIT FOR INSTALLMENTS.—The rule is established in *Silverstin v. Kohler and Chase*[1] that suit for installments due under a conditional sale will not vest title in the vendee. The installments referred to do not include the final one, and this case recognizes the general rule in California and many other jurisdictions that suit for the entire price will vest title.[2] This case is of great practical importance to all "installment houses", allowing them to sue for each installment (save the final one) as it becomes due, without jeopardizing the right to retake the property. The contract in question was in form a lease with the privilege of purchase for one dollar after fulfillment of the terms and conditions of the lease. Only twenty dollars was paid. The vendor sued for installments then due amounting to one hundred and forty dollars and secured judgment. Neither the judgment nor subsequent installments were paid, and the piano was later taken by the vendor. The vendee sues for conversion, on the theory that the former suit had the effect of vesting title in him. Held, that the prior action did not have such effect.

The doctrine thus established is supported by considerable authority in other jurisdictions.[3] The theory of the courts in these

[15] See Los Angeles Investment Co. v. Gary, supra, n. 14; Slaughterhouse Cases (1872) 16 Wall. 36, 21 L Ed. 394; U. S. v. Cruickshank (1875) 92 U. S. 542, 23 L. Ed. 588; Virginia v. Rives (1879) 100 U. S. 313, 25 L. Ed. 667; Hodges v. U. S. (1906) 203 U. S. 1, 51 L. Ed. 65, 27 Sup. Ct. Rep 6. But cf. Gandolpho v. Hartman (1892) 49 Fed. 181, 16 L. R. A. 277, holding a covenant not to rent property to a Chinaman in violation of the fourteenth amendment.

[16] Queensborough Land Co. v Cazeau, supra, n. 4.

[17] See L. R. A. 1916 B 1208, note.

[1] (Aug. 18, 1919) 58 Cal. Dec. 138, 183 Pac. 451.

[2] Parke v. White River Lbr. Co. (1894) 101 Cal. 37, 35 Pac. 442; Holt Mfg. Co. v. Ewing (1895) 109 Cal. 353, 42 Pac. 435; Smith v. Barber (1899) 153 Ind. 322, 53 N. E. 1014; Skoog v. Mayer Bros. (1913) 122 Minn. 209, 142 N. W. 193; Stewart & Holmes Drug Co. v. Ross (1913) 74 Wash. 401, 133 Pac. 577; Waltz v. Silviera (1914) 25 Cal. App. 717, 145 Pac. 169, commented upon at 3 California Law Review, 166; Frish v. Wells (1909) 200 Mass. 429, 86 N. E. 775, 23 L. R. A. (N. S.) 144 and note. The theory of the courts in these cases is that suit for the total price is inconsistent with any action to recover possession; that plaintiff could elect which remedy he would pursue, but could not have both. Therefore if suit for the price be the remedy elected, in effect the title is vested in the vendee.

[3] Ratchford v. Cayuga Cold Storage & Warehouse Co. (1913) 159 App. Div. 525, 145 N. Y. Supp. 83, affirmed (1916) 217 N. Y. 565, 112 N. E. 447; Haynes v. Temple (1908) 198 Mass. 372, 84 N. E. 467; Russell v. Martin (1919) 122 N. E. 447 (Mass.); 63 University of Pennsylvania Law Review, 695; 15 Columbia Law Review, 556, characterizing as sound the holding in Franklin etc. Furniture Co. v. Knickerbocker Land Co. (1915) 53 N. Y.

cases is well expressed in Haynes v. Temple,[4] where it is held that payment would not have vested title in the vendee, but that title would have remained in the vendor until the final payment. Suit for payment should have no greater effect than the payment itself. The general rule of election of remedies does not apply here, for there are no inconsistent remedies sought until the entire sum is due.

The principal case is also in accord with the proposed "Act to make Uniform the Law of Conditional Sales".[5] Section 22 of this proposed act contains the provision: ". . . . neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such an action, nor a collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods . . . . but such right of retaking shall not be exercised by the seller after he has collected the entire price. . . ." The rule of the proposed act is as a matter of fact more favorable to the vendor than is the present California rule, since it frankly permits inconsistent remedies.

The contract in the principal case, in common with the majority of contracts of its kind, provided that on fulfillment of the terms of the lease the vendee could purchase for one dollar. Is this dollar the final payment? No case deciding this point was found. It is suggested, however, that the court would undoubtedly look to the substance and not the form, as it does in construing a contract in form a lease as a conditional sale,[6] and would hold this added sum of one dollar to be merely part of the formal subterfuge of the lease. The real condition vesting the title is the payment of the "rent" or installments,[7] and suit for all of the installments would probably be construed to vest the title in the vendee, regardless of the remaining one dollar. *E. M. J.*

TORTS: THE DOCTRINE OF FLETCHER V. RYLANDS IN CALIFORNIA.[1]—*Sutliff v. Sweetwater Water Company*[2] was an action to recover for damage done to plaintiff's land by the breaking of defendant's reservoir during an unprecedented flood of the Sweet-

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L. J. 148, that payment by note of part of the price did not vest the title. But see contra, Eilers Music House v. Douglass (1916) 90 Wash. 683, 156 Pac. 937, L. R. A. 1916E 613, holding that bringing an action to recover amounts already due is an election to treat the sale as absolute, and that it is immaterial that the whole purchase price was not sued for.

[4] Supra, n. 3.

[5] 18 Columbia Law Review, 116.

[6] Lundy Furniture Co. v. White (1900) 128 Cal. 170, 172, 60 Pac. 759, 79 Am. St. Rep. 41. Kelley-Springfield Road Roller Co. v. Schlimme (1908) 220 Pa. 413, 69 Atl. 867; 1 California Law Review, 76; Williston on Sales, § 336.

[7] The practice of some commercial houses in giving a bill of sale immediately on payment of all installments, without requiring the payment of the additional dollar, lends support to this view.

[1] For authorities in other states see notes, 15 L. R. A. (N. S.) 541, 33 L. R. A. (N. S.) 1061; 1 English Ruling Cases, 272.

[2] (Jan. 7, 1920) 59 Cal. Dec. 64.